



December 15, 2000

Mr. Bernardo J. Garcia
Senior Assistant County Attorney
1019 Congress, 15th Floor
Harris County
Houston, Texas 77002

OR2000-4717

Dear Mr. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142351.

The Harris County Auditor (the "Auditor") received a request for various information concerning cash bonds in criminal cases. You claim that portions of the requested information are excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of the information at issue.¹

Before we address your section 552.130 claim, we consider first a procedural matter related to this request. You inform us that the Auditor received the request for information on August 25, 2000 and that on September 27, 2000, the Auditor sent the requestor an itemized statement of the estimated charges for producing copies of the requested information. On October 6, 2000, the requestor responded to the Auditor's itemization by stating that "[b]ecause of the price quotation . . . please note that we would like to review the records that is [sic] the subject of the . . . quote. Your making the documents available for review would be appreciated." You suggest that, by operation of section 552.2615 of the Government Code, the requestor has withdrawn his request.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

When the charge for producing copies of requested information will exceed \$40, section 552.2615 of the Government Code requires a governmental body to provide a requestor with a written itemized statement that details all estimated charges that will be imposed. If the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 days after the date the statement is sent to the requestor that the requestor will accept the estimated charges or that the requestor is modifying the request in response to the itemized statement, the request is considered to have been withdrawn. Gov't Code § 552.2615(b). In this case, the requestor timely responded to the itemization by changing the request from one for copies to one for inspection of the records. Thus, we do not consider the request to have been withdrawn by operation of section 552.2615.

On another procedural matter, we conclude that in this case the Auditor failed to timely seek an open records ruling. *See* Gov't Code § 552.301 (setting ten-day deadline). Consequently, the requested information is presumed to be public information unless the Auditor can demonstrate a compelling reason for withholding the information. *Id.* § 552.302. The applicability of law that makes information confidential or that protects a third party's interests is a compelling reason for nondisclosure. *See* Open Records Decision No. 150 (1978). Sections 552.101 and 552.130 are such compelling law.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Pursuant to this exception, the Auditor must withhold from disclosure the copies of the Texas driver's licenses in their entirety. The Auditor must also withhold the Texas driver's license numbers, with one possible exception. If the cash bail bond is information that is also contained in a public court record, it must be released in its entirety. *See* Gov't Code § 552.022(a)(17).

The submitted information also includes two copies of a completed Internal Revenue Service Form 8300. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. "Return information" has been interpreted broadly by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989). Section 552.101 of the Government Code excepts from public disclosure information that is made confidential by law, including information that is made

confidential by statute. Accordingly, the Auditor must not release the Forms 8300 to the requestor. *See* Open Records Decision No. 600 (1992).

The submitted information additionally includes a copy of a social security card. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the Auditor pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the Auditor must release to the requestor the requested information with three exceptions. First, the driver's license information is protected from disclosure under section 552.130 of the Government Code, unless the information appears in a public court record. In addition, tax return information is excepted from disclosure under section 552.101 of the Government Code. Finally, the social security number information may be excepted from disclosure under section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/seg

Ref: ID# 142351

Encl. Submitted documents

cc: Mr. Anthony P. Griffin
1115 Moody
Galveston, Texas 77550
(w/o enclosures)